

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3253

IN THE MATTER OF:

Served November 28, 1988

Application of TRI STATE CASINO)
TOURS, INC., for a Certificate of)
Public Convenience and Necessity -->
Charter and Special Operations ---)

Case No. AP-88-28

By application filed July 6, 1988, Tri State Casino Tours, Inc. (Tri State or applicant), seeks a certificate of public convenience and necessity to transport passengers, together with mail, express, and baggage in the same vehicle as passengers, in charter and special operations between points in the Metropolitan District. 1/

A public hearing was held on Thursday, August 18, 1988, pursuant to Order No. 3200, served July 13, 1988, and incorporated herein by reference. The hearing continued on Thursday, September 8, 1988, for examination of late-filed financial data pursuant to Commission Order No. 3220, served August 22, 1988, and incorporated herein by reference. Applicant presented two company witnesses and five public witnesses. Gold Line, Inc.; National Coach Works, Inc.; and The Airport Connection, Inc., timely protested the application, and each presented evidence at the hearing.

SUMMARY OF EVIDENCE

Mr. G. David Bolen, III, Tri State's general manager and co-owner, testified on applicant's behalf. Applicant is a Delaware corporation and its headquarters is located in Bethany Beach, DE. Its operations are based at its terminal facility in Gainesville, VA, about 35 miles from Washington, DC. It also has an office in Washington, DC. Applicant is a member of the American Bus Association and United Bus Owners Association. Tri State currently conducts interstate charter operations along the East Coast (except between points in the Metropolitan District) pursuant to authority issued by the Interstate Commerce Commission (ICC). Applicant is seeking WMATC authority because it has had numerous requests from patrons to provide transportation within the Metropolitan District. Because its equipment is not used to capacity in its authorized interstate operations, applicant has been leasing equipment to existing carriers, including Gold Line, for long-haul movements. It now desires to utilize its excess capacity in local operations within the Metropolitan area.

1/ To the extent that this application could be interpreted to include transportation solely within the Commonwealth of Virginia, it was dismissed by Commission Order No. 3200.

Applicant proposes to conduct operations using four motor coaches manufactured between 1973 and 1988 and ranging in seating capacity from 43 passengers to 47 passengers. Two of the coaches are new European-style luxury coaches, hereinafter referred to as LAG ^{2/} buses or equipment. The LAG buses are equipped with televisions, VCR's, wet bar, refrigerator, contour passenger seating, air conditioning, and a public address system. One of the LAG buses is a 1987 model accommodating 43 passengers and is valued at \$175,000. The second LAG bus is a 1988 model seating 47 passengers and is valued at \$208,000. The other two vehicles are standard MCI coaches. One is a 1973 model accommodating 47 passengers and is valued at \$26,000. The other MCI bus is a 1978 model seating 46 passengers and is valued at \$65,000. Applicant is willing to add to its fleet if demand dictates.

Tri State employs four full-time drivers and five part-time drivers. Applicant's drivers undergo a written examination and a road test. They must also have a safe driving record. Every two months Tri State holds a meeting for its employees at which safety procedures and current events throughout the transportation industry are highlighted. Tri State attempts to make each of its vehicles available one day a week for a complete maintenance check. Applicant's daily maintenance program includes pre-trip inspection of the vehicle's water, brakes, batteries, belts, oil levels, tires, and lights. Oil is changed every 6,000 miles. The vehicles are equipped with fire extinguishers, triangular reflective devices, and medical kits. In the event of a breakdown applicant would attempt to have the vehicles repaired immediately. If repairs cannot be made promptly, applicant would call on another carrier to perform the transportation. The vehicles would be garaged at its Gainesville facility. Applicant's operations would be conducted on a call and demand basis 24-hours a day. Applicant has no specific plans for its proposed special operations.

Applicant's proposed charter rates for the luxury LAG buses (43 to 47 passengers) are \$50 an hour for trips up to 10 hours, with a 5-hour minimum of \$250. For trips of 10 to 20 hours, the proposed charter rate is \$40 an hour, with a minimum of \$400. The rates proposed for service in the MCI buses (46 to 47 passengers) are \$40 an hour for trips up to 10 hours, with a 5-hour minimum of \$200. For trips of 10 to 20 hours, the proposed charter rate is \$35 an hour, with a \$350 minimum. Side trips and sightseeing tours that depart from the route covered by the charter arrangement and sightseeing tours "at destination or intermediate points" will be billed at \$1.95 for "extra miles traveled." The proposed rate for special operations is \$15 per person, per trip. Applicant is familiar with the Compact and the Commission's rules and regulations and intends to comply with them.

Mr. James Cohee appeared on applicant's behalf as a financial witness. Mr. Cohee is a public accountant who was responsible for preparing applicant's financial data. Tri State's updated balance sheet as of July 31, 1988, shows total assets, after allowance for

^{2/} The two luxury coaches were manufactured in Belgium by Leonard and Arnold Gensens, hence the term "LAG."

depreciation, of \$666,354.93. The figure includes \$53,346.63 in cash, and land valued at \$123,584.86. Liabilities are listed at \$818,317.89 (including \$226,023.72 owed affiliate corporations); equity consists of \$100 in capital stock and a deficit to retained earnings of \$152,062.96. Tri State's operating statement for the ten-month period ended July 31, 1988, shows operating revenue of \$443,423.07 and operating expenses of \$289,669.31; administrative expenses are listed at \$152,559.09 resulting in net operating income for the period of \$1,194.67. In addition, applicant recognized \$601.29 in interest income for the period. Applicant expects to generate revenues of \$104,000 from its first 12 months of WMATC operations. Operating expenses (including administrative expenses) for the same period are projected at \$87,569.64, resulting in estimated net profits of \$16,430.36.

Mr. Cohee testified that, although the acquisition of any additional coaches would increase applicant's debt, he feels confident that the corporation would still be able to secure adequate funds to finance such future growth. The witness also noted that any increase in applicant's fleet should result in a corresponding increase in its projected operating income.

Ms. Jean Carcione testified in support of the application. Ms. Carcione is the owner and president of National Fine Arts Associates, Inc. (NFAA). NFAA provides sightseeing tours, highlighting art and history, throughout the Metropolitan District. Although the witness requires transportation on a year-round basis, service is needed mainly during the months of April through June, with requests for service peaking again during the fall season. The witness requires transportation to historic sites and museums located in Northern Virginia and the District of Columbia. Transportation also is needed for occasional shopping trips to White Flint Mall, located in Montgomery County, MD, and for area restaurants and clubs. Ms. Carcione used the services of existing coach carriers but has found available service inadequate. She has not always been able to secure needed transportation. Lateness of the carriers was also a concern. The witness opined that a lack of available service has created a market that provides inferior service. The witness has lost business because of poor service. She is, therefore, willing to pay a premium price for the service proposed by applicant. Ms. Carcione arranges an average of 40 trips a year. Most of her clients are visitors to the United States from Europe and are accustomed to receiving service in luxury vehicles. NFAA's average group size is thirty persons. The witness finds coaches appropriate for these groups because it is important that clients have plenty of room and feel comfortable. NFAA needs charter service only.

Ms. Elaine Curl testified in support of applicant's proposed charter operations. Ms. Curl is the owner and president of The Convention Store. The Convention Store arranges specialized bus transportation throughout the United States, with a great deal of work being performed within the Metropolitan District. The Convention Store concentrates most of its efforts on designing and running shuttle bus systems for convention attendees. The witness requires up to 50 buses

a month. The Convention Store routinely handles 10,000 to 25,000 passengers a month, serving major hotels located throughout the Metropolitan District. Transportation is required to the Capital Centre, Prince George's County, MD; Mount Vernon, VA; and other points of interest located throughout the Metropolitan District. Ms. Curl presently uses the services of existing carriers but is always in need of more equipment due to the high volume of transportation that her company handles. The witness fears that a shortage of available coach carriers may eventually result in loss of business for The Convention Store. Eighty-five percent of The Convention Store's transportation need is for all-day shuttle service, and Ms. Curl would primarily use applicant's MCI buses for that work. However, the witness needs all equipment that is available. The LAG's would meet the needs of customers seeking luxury service.

Mr. Arthur Waine, co-owner and vice-president of Travel-On, Ltd., testified in support of the application. Travel-On is a full-service retail travel agency. It has six offices located throughout the Metropolitan District. Mr. Waine makes transportation arrangements for as many as 300 people a month and requires ground transportation service two to three times a month, primarily airport transfers to and from hotels located in the Metropolitan District. Travel-On has a contract with the University of Maryland, located in Prince George's County, MD. Most of the transportation generated by the contract centers around athletic events, such as transporting band members from the campus to Union Station, Washington, DC. The witness expressed no preference for the LAGs over the MCI's. Travel-On has had no need for special operations service.

Ms. Shirley Norwood testified in support of the application. Ms. Norwood is vice-president of Tailored Tours, Inc. Tailored Tours makes transportation arrangements for persons attending meetings and conventions in the metropolitan area. Its clientele is V.I.P.-oriented and requires shuttle movements and transportation to social events. The witness may require up to 11 buses a day to fulfill the requirements of a shuttle move. Ms. Norwood is sometimes called upon to provide tours to Arlington National Cemetery and Mount Vernon, VA, and tours that highlight the area's night life. The witness has used the services of other carriers in the past but has experienced difficulty in securing adequate and reliable transportation. Ms. Norwood is particularly interested in the use of applicant's LAG vehicles inasmuch as she has received requests for transportation in a luxury vehicle. Ms. Norwood believes that the ability to offer a luxury vehicle to potential clients would enable her to attract a "special class of tourist." Tailored Tours, Inc., would require charter service an average of four times a month and would be willing to use applicant's MCI's. The witness expressed no need for special operations service.

Mr. Terry Fry testified in support of the application as a representative of Mark Mosely's Travel. Mr. Fry is the director of business development. His responsibilities include market analysis, sales, and customer relations. Mr. Fry arranges transportation for youths on pleasure trips and for adults on business and pleasure trips.

The average size of a group is 35. The witness charters only European-styled vehicles such as LAG's. He has had requests to transport groups between points in the Metropolitan District in the past but has been unable to fulfill the requests because of the unavailability of luxury vehicles in the Metropolitan District. The witness has used applicant's service for non-WMATC moves and has been pleased with the service. Currently, the witness needs charter service only. However, he may investigate arranging individually-ticketed service in the future.

Mr. Stanley Johnson, Gold Line's controller, testified in opposition to the application on behalf of Gold Line and its affiliated company National Coach Works, Inc. (NCW). Gold Line holds WMATC Certificate No. 14 which authorizes, inter alia, the transportation of passengers in charter and special operations between points in the Metropolitan District. NCW holds WMATC Certificate No. 26 which authorizes the transportation of passengers in charter operations between points in the Metropolitan District. Gold Line operates 61 motor coaches. It maintains garage facilities at Tuxedo, MD, and an administrative and sales office in Southwest Washington. Gold Line provides charter and special operations throughout the Metropolitan District, including lectured sightseeing and airport transfers. Gold Line presently operates one 25-passenger luxury vehicle that is equipped with TV's, radios, a bar, sofa, and table. Gold Line previously operated three luxury coaches but found that demand for such equipment did not justify the cost involved to retain them.

On cross-examination Mr. Johnson conceded that the luxury vehicles that Gold Line decided to discontinue seated 20 passengers and that Gold Line never operated a luxury vehicle with a seating capacity of 43 passengers or more. The rate charged by Gold Line for its luxury vehicle is \$60 an hour with a three-hour minimum. The witness testified that National Coach Works, Inc., currently operates eight MCI buses. NCW does not operate any luxury vehicles.

Mr. John Tanavage, president of The Airport Connection, Inc. (TAC), testified in opposition to the application on behalf of that carrier. TAC holds WMATC Certificate No. 111 which authorizes airport ground transportation in charter and special operations between points in the Metropolitan District, and charter operations between points in the Metropolitan District, excluding points in Montgomery County, MD. TAC presently uses 12 coaches to provide general charter operations. TAC currently charters four to five buses from NCW to perform special operations. TAC is involved in a bankruptcy proceeding and is undergoing Chapter 11 reorganization. Mr. Tanavage attributes TAC's loss of revenue to increased competition in the area. The witness believes that there is a highly competitive charter market in the Metropolitan District and that entry of a new carrier would have a devastating effect on TAC's ability to emerge from Chapter 11. TAC does not operate any luxury equipment.

DISCUSSION AND CONCLUSIONS

This application is governed by Title II, Article XII, Section 4(b) of the Compact which requires that an applicant prove it is fit, willing, and able to perform the proposed transportation properly and to conform to the provisions of the Compact and the Commission's rules, regulations, and requirements thereunder. Section 4(b) further requires that applicant must prove that the proposed service is required by the public convenience and necessity. Based on a review of the entire record in this case, we find that applicant has sustained the burden of proof imposed by the Compact as to charter operations but not as to special operations. Indeed, there being no probative evidence of record respecting any need for applicant's proposed service in special operations, that portion of the application must be denied.

Applicant is an experienced ICC carrier. In addition to its ICC operations, it presently conducts charter operations between points in the Metropolitan District in accordance with WMATC temporary authority issued pursuant to Order No. 3221, served August 23, 1988. An examination of Tri State's finances reveals a thinly-capitalized company with significant debt. However, authorization of the proposed charter service would allow the applicant the opportunity for additional vehicle utilization and a correspondingly improved financial situation. Applicant is a going concern with prospects for continued growth and financial development. Before the effective date of its temporary authority, applicant made careful efforts not to operate unlawfully within the Metropolitan District. Applicant has given all indications that it will continue to comply with the Compact, rules, and regulations of the Commission and applicable safety regulations. Accordingly, we conclude that applicant is fit and able, financially and otherwise, properly to perform the proposed charter operations.

Applicant produced five public support witnesses. Their testimony shows that Tri State's proposed charter operations would meet an expressed need, thereby serving a useful public purpose. The witnesses cumulatively testified to a responsibility for arranging charter coach transportation for thousands of passengers per month between points throughout the Metropolitan District, including transportation to various tourist attractions, airport transfers, and day-long shuttle movements. The witnesses believe that bus service beyond what is presently authorized in the Metropolitan District is required to meet their existing and projected needs. Although the testimony indicates that the addition of applicant's four coaches will not significantly alleviate the need for additional equipment in the Metropolitan area, it will certainly lessen the burden placed on the companies responsible for securing adequate transportation for clients. Some witnesses are very interested in the LAG luxury vehicles that applicant offers. Most of the witnesses have a segment of their clientele who would not object to paying premium rates for luxury service. Many of the witnesses view the added features of the LAG buses as a selling point enabling them to acquire new customers. They need and would use applicant's charter service in luxury buses in addition to its service in standard coaches.

Protestants contend that existing service is adequate to meet the needs of the public, and that there is no demand for service in a luxury coach. The testimony of the public support witnesses, however, indicates that protestants do not completely meet their needs for service in either standard or luxury buses. Moreover, none of the protestants offer service in luxury buses such as those applicant would be able to provide. Accordingly, the evidence supports the conclusion that the public need found to exist has not been and will not be served as well by existing authorized carriers.

This brings us to an analysis of whether the proposed service can be provided without endangering or impairing the operations of existing carriers contrary to the public interest. Protestant Gold Line operates only one luxury coach with a seating capacity of less than half of those operated by applicant. Protestants NCW and TAC operate no luxury coaches. In addition, the witnesses currently using the protestants' services have given no indication that they intend to stop if this application is granted. Therefore, persons seeking such service would not be diverting prospective sales from protestants. The record is replete with pleas for additional service, not substitutions. In view of the foregoing, TAC's argument that a new entrant into the market would have the effect of worsening its deteriorated economic state because of lost sales has no basis in the evidence of record.

Balancing each segment of the three-part test as set forth in In Re Pan-American Bus Lines Operation, 1 M.C.C. 190, 203 (1936), we conclude that the benefits which will accrue to the public from the authorization of the charter service proposed far outweigh any detriment to existing authorized carriers, and that the proposed charter service is required by the public convenience and necessity.

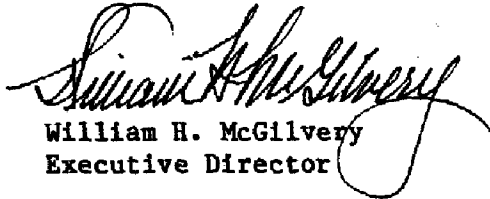
THEREFORE, IT IS ORDERED:

1. That Tri State Casino Tours, Inc., is hereby conditionally granted, contingent upon timely compliance with the terms of this order, authority to transport passengers in charter operations between points in the Metropolitan District, restricted against transportation solely within the Commonwealth of Virginia.
2. That in all other respects the application of Tri State Casino Tours, Inc., is hereby denied.
3. That Tri State Casino Tours, Inc., is hereby directed to file with the Commission within 30 days of the service date of this order (a) two copies of its WMATC Tariff No. 1, as revised to delete special operations; (b) an equipment list specifying make, year, model, serial number, seating capacity, and license plate number and jurisdiction for each vehicle to be used in WMATC operations; (c) evidence of ownership or a lease in conformance with Regulation No. 69 for each vehicle to be used in WMATC operations; (d) a certificate of insurance in accordance with Regulation No. 62 and covering all vehicles listed in this application; and (e) an affidavit of identification of vehicles pursuant to Regulation No. 67 for which purpose WMATC No. 143 is hereby assigned.

4. That unless Tri State Casino Tours, Inc., complies with the requirements of the preceding paragraph within 30 days of the service date of this order, or such additional time as the Commission may direct or allow, the grant of authority herein shall be void, and the application shall stand denied in its entirety effective upon the expiration of the said compliance time.

5. That upon compliance with the conditions set forth in the preceding paragraphs, a certificate of public convenience and necessity will be issued to Tri State Casino Tours, Inc., in the form and as worded in the Appendix to this order.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS WORTHY, SCHIFTER, AND SHANNON:


William H. McGilvery
Executive Director

NO. 143

TRI STATE CASINO TOURS, INC.

BETHANY BEACH, DELAWARE

By Order No. 3253 of the Washington Metropolitan Area Transit Commission issued November 28, 1988;

AFTER DUE INVESTIGATION, it appearing that the above-named carrier is entitled to receive authority from this Commission to engage in the transportation of passengers within the Washington Metropolitan Area Transit District as a carrier, for the reasons and subject to the limitations set forth in Order No. 3253;

THEREFORE, IT IS ORDERED that the said carrier is hereby granted this certificate of public convenience and necessity as evidence of the authority of the holder thereof to engage in transportation as a carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privilege herein granted to the said carrier.

IT IS FURTHER ORDERED that the transportation service to be performed by the said carrier shall be as specified below:

IRREGULAR ROUTES:

CHARTER OPERATIONS, transporting passengers, together with mail, express, and baggage in the same vehicle with passengers, between points in the Metropolitan District.

RESTRICTED against transportation solely within the Commonwealth of Virginia.

AND IT IS FURTHER ORDERED and made a condition of this certificate that the holder thereof shall render reasonable, continuous, and adequate service to the public in pursuance of the authority granted herein, and that failure to do so shall constitute sufficient grounds for suspension, change, or revocation of the certificate.